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Flushing office  
January 7, 2009

Mr. Robert Wisniewski, Esq.  
225 Broadway – Suite 612  
New York, New York 10007

**Re.: Gortat et al v. Capala Brothers, Inc. et al**  
**EDNY Docket No. 07CV3629**  
**Via Facsimile**

Dear Mr. Wisniewski:

In reply to your letter of December 31, 2008, please be advised that in light of your additional misrepresentations on that letter leaving out that you were filing an additional motion again for a fourth time asking Magistrate Gold to grant you an additional extension of discovery, which we now need to oppose, with other relief you are seeking, we need at least 30 days to prepare opposition to the other motions you are filing on the collective action and class action.

While you served on December 29, 2008 additional interrogatories on the corporate defendant, defendant Robert Capala and defendant Pawel Capala, such amended third counterclaim only relates to the corporate defendant. Hence, the identical interrogatories to all three defendants will be addressed only by the corporate defendant within 30 days of the receipt Fed Ex from December 29, 2008. I urge you withdraw the duplicative improper interrogatories served on the individual defendants. If you do not, we will file a Rule 11 motion against you.

Furthermore, we will also file a Rule 11 against you unless you withdraw your present frivolous motion before Hon. Gold under Doc 78. This motion is replete with misrepresentations of facts and prejudicial to the defendants who have already suffered enough due to your personal reasons, vacations and your just plain sitting on the case for too long. If you do not withdraw such motion by January 9, 2009, we will file a Rule 11 motion against you for abuse of discovery and having presented yet another set of distorted and misrepresentations to the Court.

While we are presently working on the second set of interrogatories just served on the corporate defendant, and the accompanying fourth (really seventh) request of additional production while also working on the motion for partial summary judgment, and await the briefing schedule from the Second Circuit, and now Rule 11 motions and opposition to the latest frivolous and prejudicial motion, as per previous correspondence sent to your office explaining the reasons for such conclusion, a minimum 30 day for opposition on the additional motions is the minimum that ought to be agreed upon here.

Sincerely,

Philip Orner



Cc; Hon. Magistrate Gold

**Robert Wisniewski P.C.**  
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225 Broadway, Suite 612  
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December 31, 2008

Felipe Orner, Esq.  
72-29 137<sup>th</sup> Street  
Flushing, NY 11367  
*VIA FAX*

**Re.: Gortat et al. v. Capala Brothers Inc. et al.**

**Docket No.: 07 cv 3629 (ILG)(SMG)**

Dear Mr. Orner,

Attached please find a copy of the letter sent to your office on December 23, 2008.

Plaintiffs wish to notify you that there are changes to the briefing schedule initially suggested by them, the new proposed briefing schedule being detailed below. Plaintiffs expect to file Plaintiffs' motion for class certification under Fed. R. Civ. P. 23 and Plaintiffs' motion for a collective action under the FLSA on January 9, 2009. I suggest that Defendants have until January 26, 2009 to file their opposition to each motion and Plaintiffs have until February 9, 2009 to file their responses. Please let me know if this briefing schedule is acceptable to you.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

  
Robert Wisniewski

**Robert Wisniewski P.C.**

ATTORNEYS-AT-LAW  
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December 23, 2008

Felipe Orner, Esq.  
72-29 137<sup>th</sup> Street  
Flushing, NY 11367

*VIA FEDERAL EXPRESS*

**Re.: Gortat et al. v. Capala Brothers Inc. et al.**

**Docket No.: 07 cv 3629 (ILG)(SMG)**

Dear Mr. Orner,

Enclosed with this letter is are the following documents:

- (1) Plaintiffs' Second Interrogatories to Pawel Capala
- (2) Plaintiffs' Second Interrogatories to Robert Capala
- (3) Plaintiffs' Second Interrogatories to Capala Brothers, Inc.
- (4) Plaintiffs' Fourth Set of Document Requests to Capala Brothers, Inc.

Further, Plaintiffs wish to notify you that Plaintiffs expect to file Plaintiffs' motion for class certification under Fed. R. Civ. P. 23 and Plaintiffs' motion for a collective action under the FLSA on December 31, 2008. I suggest that Defendants have until January 19, 2008 to file their opposition to each motion and Plaintiffs have until February 2, 2008 to file their responses. Please let me know if this briefing schedule is acceptable to you.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

\_\_\_\_\_/s\_\_\_\_\_  
Robert Wisniewski